MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2573 OF 2007

IN

SUIT NO. 1437 OF 1995

THE TATA HYDRO ELECTRIC POWER SUPPLY CO. LTD. & ORS. .. PLAINTIFFS

Vs.

UNION OF INDIA & ORS. .. DEFENDANTS

None for plaintiffs

Ms. Nisha Valani with Mr. S.R. Rajguru for defendants

CORAM: **SMT. RANJANA DESAI, J.**

DATE: SEPTEMBER 14, 2007.

P.C.

. This notice of motion is taken out by the defendants praying that the defendants' written statement declared on 18th June, 2007 be taken on and delay in filing the same may be condoned. In the affidavit-in-support of the Chamber Summons following explanation is given:

. "(7). I say that Summons in the aforesaid Suit filed on 14th March, 1995 was served upon the

Defendants in or about January 1996 summoning the Defendants on 17th April, 1996 at 11.00 A.M. As per Note dated 12th April, 1996 on the docket of Law Ministry it is recorded that "For Drafting Written Statement, sent to Advocate".

(i) The Plaint dated 14th March, 1995 was admitted on 19th April, 1995. Simultaneously the plaintiffs also filed Writ Petition No. 409 of 1995 for finalization of the value of all the imported cases / goods which were assessed provisionally. The Writ Petition No. 409 of 1995 was disposed of by orders dated 2nd February, 2005 passed by the Hon'ble Division Bench discharging Rule and with observations that Respondents have finalised provisional assessment and have passed order dated 14th November, 2000 and hence the petitioners grievance is already redressed and nothing survives in the Writ Petition.

(ii) As per Roznama dated 29th March, 2000 of the Learned Prothonotary &Senior Master, High Court, Bombay the Defendants i.e. the Union of India and their advocates were absent although the Defendants have entered their appearance through Mrs. S. Bhattacharya and hence the orders passed per Court

are as follows:

. "However, there is no Written Statement by any of the Defendants, Suit transferred to list of undefended suits and to appear after four weeks".

(iii) The suit thereafter appeared on 15th March, 2007 before the Hon'ble Mr. Justice Mohata when as per the roznama of the said date the same was adjourned for three weeks directing the plaintiffs to file affidavit of documents and evidence.

(iv) On 12th June, 2007, the matter was SO to 14th June, 2007 and on 14th June, 2007 also the same was SO to 18th June, 2007 and was directed to be placed along with Suit No. 3800 of 1992 and on 19th June, 2007 also the same was directed to SO for two weeks along with Suit No. 3800 of 1992. On 9th July, 2007 when the suit was directed to be placed on the board on 18th July, 2007.

. (8). I say that the Defendants affirmed the Written Statement on 18th June, 2007 but on 19th June, 2007, Hon'ble Mr. Justice Mohata indicated that separate application/Notice of Motion should be filed for filing Written Statement.

. (9). I say that the delay has been caused in filing Written Statement because of pendency of two matters pertaining to the same subject matter i.e. Writ Petition No. 409 of 1995 and the aforesaid suit.

2. None is representing the plaintiffs. The learned counsel for the defendants states that the defendants had served a notice on the plaintiffs. Affidavit of service of Shri A. K. Pandey, Appraiser, Customs, Docks (Import) Mumbai is filed. To the affidavit copy of the letter addressed by the learned counsel for the defendant to the plaintiffs is annexed. This letter states that the matter was adjourned to 24th August, 2007 and that the plaintiffs are required to attend the court. Xerox copy of docket of the notice of motion containing the acknowledgement of the plaintiffs in token of having received the notice of motion and affidavit in support is also annexed to the affidavit of service.

3. However, on 24th August, 2007, the plaintiffs' counsel did not remain present. Hence the motion was adjourned for one week. On 13/9/07 also the

learned counsel for the plaintiffs was not present. The suit was, therefore, adjourned to 14/9/07. Today again the learned counsel for the plaintiffs is not present.

4. Hence for the reasons stated in the affidavit-in-support of the motion, which are quoted hereinabove, the delay in filing the written statement is condoned on the condition that the defendants pay costs quantified at Rs.2,000/- to the Kirtikar Library. If cash of Rs.2,000/- is not accepted, the defendants shall pay the said amount by way of cheque. The amount be paid within three weeks from today. The defendants shall satisfy the office that the amount is paid. On being satisfied the office shall take the written statement on file.

5. Notice of motion is disposed of.

JUDGE.